

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **SYDNEY HYMAN PFEIFFER, CPA, CA**, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Sydney H. Pfeiffer

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made November 8, 2016)

1. This tribunal of the Discipline Committee met on November 8, 2016 to hear an allegation of professional misconduct brought by the Professional Conduct Committee (PCC) against Sydney H. Pfeiffer, CPA, CA, a Member of CPA Ontario.

2. Ms. Tamara Center appeared on behalf of the PCC. Mr. Pfeiffer attended with his counsel Mr. Frank Bowman. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on November 8, 2016, and the written Decision and Order was sent to the parties on November 9, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

4. The following allegation of professional misconduct was made against Mr. Pfeiffer by the PCC on August 23, 2016:

THAT, the said Sydney H. Pfeiffer, on or about the 11th day of April, 2007, was convicted of the criminal offence of fraud pursuant to section 380(1)(a) of the Criminal Code of Canada, as set out in Schedule "A" attached*, and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

(*Schedule A is not attached to this document)

Plea

5. Mr. Pfeiffer entered a plea of guilty to the Allegation.

The case for the PCC

6. Ms. Center advised the tribunal that this case was based on a fraud conviction in the province of Quebec and filed a Brief of Authorities (Exhibit 1) containing the relevant section of the *Criminal Code*, the *Evidence Act* and the Rules and Regulations of CPA Ontario pertaining to this matter. Ms. Center submitted that when a member is charged under Rule 201.1 for a

conviction on an offence referred to in Rule 102, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession and its ability to serve the public interest. Ms. Center stated that the *Evidence Act* provides the authority for the panel to rely on certified copies of transcripts (s. 5(2)) and proof of conviction (s. 22.1) as evidence. Ms. Center filed a Document Brief (Exhibit 2) and a Certified Copy of the Record of Proceedings (Exhibit 3) pertaining to the conviction and sentencing of Mr. Pfeiffer.

7. In April 2007, Mr. Pfeiffer pled guilty to fraud contrary to s.380 of the Criminal Code before the Court of Quebec. He agreed to make restitution in the amount of \$750,000, which was paid between 2007 and 2013. In 2013, Mr. Pfeiffer received a conditional sentence of two years less a day and probation for a period of two years.

Submissions

8. Ms. Center submitted that the tribunal had the authority to rely on the documents that had been filed in this matter and the guilty plea. Ms. Center stated that, on the balance of probabilities, Mr. Pfeiffer had failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest and must be found to have engaged in professional misconduct under Rule 201.1.

9. Mr. Bowman had nothing further to add on behalf of Mr. Pfeiffer.

Decision

10. After deliberating, the tribunal found, on the uncontested evidence, that the allegation had been proven. The tribunal announced the following decision:

THAT having heard the plea of guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds Sydney Hyman Pfeiffer guilty of the Allegation and of professional misconduct.

Reasons for Decision

11. When a member is charged under Rule 201.1 for a conviction on an offence referred to in Rule 102, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession and its ability to serve the public interest. That presumption was not rebutted, and Mr. Pfeiffer was found to be in breach of Rule 201.1. Even without the presumption, his misconduct would have been found to have been in breach of the Rule. Fraud goes to the very heart of the trust that the public puts in accountants, such that any member who commits a fraud of whatever amount runs the risk of impairing the reputation of the accounting profession and its ability to serve the public interest. In this case the member, ably represented by his counsel, admitted to fraudulent misconduct over a lengthy period of time and involving significant amounts such that there could be no real doubt that it was sufficiently serious to constitute acting in a manner that failed to maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Issue of Sanction:

The relevant facts

12. The additional facts relied on by the PCC with respect to sanction were fully set out in the Agreed Statement of Facts. Ms. Center then filed the Agreed Statement of Facts (Exhibit 4) signed by Mr. Pfeiffer on his own behalf and by Ms. Center on behalf of the PCC.

13. In presenting the case for the PCC on sanction, Ms. Center reviewed the Agreed Statement of Facts, which also included references to documents contained in the Document Brief. No other evidence was called on behalf of the PCC with respect to sanction.

14. Mr. Pfeiffer and his corporate company operated as a trustee in bankruptcy for several years. A spot audit by the Office of the Superintendent of Bankruptcy Canada (OSB) in 2002 disclosed that Mr. Pfeiffer had been charging and collecting fees as a trustee without proper authority over several years, and that these charges were in excess of what he was owed on many occasions. The extent of the overbilling could have been as low as \$250,000 and as high as \$750,000.

15. In July 2005, the OSB found Mr. Pfeiffer and his company guilty of professional misconduct. The Superintendent of Bankruptcy found that Mr. Pfeiffer exhibited a cavalier disregard for his obligation as a trustee and dealt with his clients' trust funds as if they were his personal funds. The Superintendent cancelled the trustee licences of Mr. Pfeiffer and his company and ordered that restitution be made to various parties.

16. In September 2007, the Administrative Committee of the Ordre des Comptables Professionnels Agréés du Québec (CPA Québec) found that the criminal offence of fraud that Mr. Pfeiffer had been found guilty of related to the practice of the profession of a chartered accountant and, in accordance with the *Professional Code*, provisionally struck him off the roll of CPA Québec.

17. In March 2014, Mr. Pfeiffer pled guilty to professional misconduct and was sanctioned by the Disciplinary Council of CPA Québec (the Council). The Council struck Mr. Pfeiffer off the roll for 10 years, retroactive to 2007, and imposed permanent restrictions on his practice.

18. In addition to the Agreed Statement of Facts being tendered, Mr. Pfeiffer was affirmed as a witness and provided information on his background. Mr. Pfeiffer stated that he became a member of CPA Québec in 1971, CPA Ontario in 1972, a trustee in 1974 and was admitted to the bar in 1989 (resigned 2007). Mr. Pfeiffer submitted that he has not practised in Québec as a chartered accountant since 2002, except for providing consulting services. He stated he has not done accounting work in Ontario since the 1980s and has no Ontario clients. Mr. Pfeiffer stated that he had been licensed in Ontario in the past but does not currently hold a public accounting licence.

19. Mr. Pfeiffer stated that between 2007 and 2013 he had obtained the funds to make full restitution of the \$750,000 by disposing of his RRSPs, selling investments and a country home, and raising money from friends and family.

20. Mr. Pfeiffer stated that he would have to take courses to qualify as a member of CPA Québec once his period of suspension has ended, as it was his intention to resume his practice at the end of the suspension period.

21. Mr. Bowman filed an Employment Information Update from the CPA Ontario website (Exhibit 5), showing Mr. Pfeiffer as retired as of September 19, 2007 and an Employment History from CPA Ontario's records (Exhibit 6), showing a chronology of Mr. Pfeiffer's work history. The Employment History showed that Mr. Pfeiffer had retired initially in 2007, and again in 2013. Mr. Pfeiffer explained that he had been reinstated as he had earned more than the minimum threshold in consulting fees in 2013 and could not be considered retired by CPA Ontario.

22. Ms. Center referred Mr. Pfeiffer to a Member Information form (Exhibit 7), confirming that

his public accounting licence had expired in November 2012. Mr. Pfeiffer stated that he thought the public accounting licence fee blended into the CPA Ontario membership fees and did not recall renewing or paying for a licence within the past 10 years. Mr. Pfeiffer said he had no recall of the requirements for maintaining a licence. Mr. Pfeiffer stated that he had done online tax courses but had not done professional development in accounting or auditing.

23. In response to Ms. Center's enquiry about his awareness of the rule that required him to report the proceedings before other adjudicative bodies, Mr. Pfeiffer said he assumed that CPA Quebec would have advised CPA Ontario and that he was made aware of his duty to report at the PCC meeting. Ms. Center pointed out that the proceedings against Mr. Pfeiffer had only come to the attention of CPA Ontario as a result of the discipline finding against him in Quebec in 2014.

Submissions on Sanction

24. Ms. Center, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand, revocation of membership, the usual publicity to all members and the public, and costs in the amount of \$8,500. Ms. Center stated that no fine or newspaper publication was being sought as those matters had been dealt with by other jurisdictions.

25. Mr. Bowman stated that Mr. Pfeiffer was in agreement with all the terms proposed except for revocation of membership. Mr. Bowman submitted that the same order as had been made in Quebec could be made by this tribunal, namely, a ten-year suspension that would expire in 2017. Alternatively, Mr. Bowman submitted that Mr. Pfeiffer could be allowed to resign his membership with CPA Ontario and he could resume his membership in CPA Quebec in September 2017.

26. Ms. Center submitted that Mr. Pfeiffer's actions showed a lack of integrity that undermined the good reputation of the profession. Ms. Center submitted that the aggravating factors included the criminal conviction for fraud and the findings of professional misconduct by the OSB and CPA Quebec. The dishonest acts were committed while Mr. Pfeiffer acted as a trustee. During the course of the criminal proceedings, Mr. Pfeiffer was identified as a chartered accountant. Ms. Center also identified other aggravating factors. The loss was \$750,000 based on the restitution order. Even if the amount of the fraud was as low as \$250,000, this was a significant amount. In addition, the fraud took place over nearly 11 years and hundreds of clients lost money that should have been used to pay dividends to them. Ms. Center stated that Mr. Pfeiffer only stopped his activities because of the audit by the OSB.

27. Ms. Center submitted that the mitigating factors were that the restitution order imposed by the court had been paid and that Mr. Pfeiffer had no previous history before the CPA Ontario Discipline Committee. Mr. Pfeiffer had pleaded guilty to the allegation and proceeded by way of an Agreed Statement of Facts.

28. Ms. Center submitted that in cases of moral turpitude, rehabilitation must give way to specific and general deterrence. The serious nature of this case should result in revocation, which addresses specific deterrence and sends a message to other members that such behavior will not be tolerated. Revocation will also address protection of the public. Ms. Center stated that the aggravating factors far outweigh any mitigating circumstances.

29. Ms. Center submitted that CPA Ontario is not bound by sanctions made by CPA Quebec, and there is no precedent for a 10-year suspension.

30. Ms. Center distributed a case brief to the tribunal containing the decisions in *Giustini*, *Bell*, *Bertrand*, *Shillington*, *Khangura* and *Burrill*, cases under Rule 201.1 involving misappropriation, fraud and/or tax evasion.

31. Mr. Bowman submitted that under the provisions of Regulation 7-3, the tribunal has the jurisdiction to order suspension of membership, with or without conditions, which could be a retroactive suspension, or make any other order it deems appropriate.

32. Mr. Bowman stated that CPA Quebec felt a retroactive suspension was appropriate, which will basically result in a one-year suspension in Quebec for Mr. Pfeiffer. Mr. Bowman submitted that this tribunal has the capability to order a similar suspension. Mr. Pfeiffer can still do consulting and insolvency work, but the order of CPA Quebec has put a restriction on the handling of clients' money. This matter has caused a financial hardship on Mr. Pfeiffer and his family. Mr. Bowman stated that Mr. Pfeiffer poses no danger to the public. As an alternative, Mr. Bowman submitted that Mr. Pfeiffer could be allowed to resign his membership in CPA Ontario.

33. Mr. Bowman distributed the *Darwish* case which involved allegations under Rule 201.1, although it was not a criminal conviction case. The tribunal in that matter did order that Mr. Darwish could resign, with an undertaking not to apply for readmission.

34. Mr. Bowman stated that Mr. Pfeiffer has limited income and will need time to pay any costs ordered. He suggested one year. Ms. Center stated that the PCC has no objection to giving Mr. Pfeiffer time to pay costs.

35. Ms. Center responded that it would not be an appropriate sanction for CPA Ontario to mirror CPA Quebec with what would amount to a one-year suspension, rather than a revocation, for a matter involving a criminal conviction for an offence involving moral turpitude.

Order

36. After deliberating, the tribunal made the following order:

1. THAT Mr. Pfeiffer be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Pfeiffer's membership in CPA Ontario be and it is hereby revoked.
3. THAT notice of this Decision and Order, disclosing Mr. Pfeiffer's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario; and
 - (b) to all provincial bodies;
 and shall be made available to the public.
4. THAT Mr. Pfeiffer surrender all certificates issued by CPA Ontario or its predecessor, including any membership certificate granting the Chartered Accountant (CA) and Chartered Professional Accountant (CPA) designation, to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

5. THAT Mr. Pfeiffer be and he is hereby charged costs fixed at \$8,000, to be

remitted to CPA Ontario within one (1) year from the date this Decision and Order is made.

Reasons for Sanctions

37. We accepted the joint submission that the appropriate sanction in this matter would be: a written reprimand, the usual publicity to all members and the public, and approximately two-thirds of the actual costs. The amount of \$8,000 was agreed upon by the tribunal. We agreed that no fine or newspaper publication be imposed as those matters had been dealt with by other jurisdictions.

38. As the evidence developed through the member's own evidence during the hearing regarding sanction, it became clear that he had been continuing to pay fees in Ontario and he registered his practice as active when his income from his consulting practice exceeded a prescribed amount above which a member was required to register his/her practice as active. It is unclear to the tribunal how he found this provision regarding registration but failed to notice his obligation to report being found guilty of misconduct in Quebec and having pleaded guilty to criminal offence in 2007. As a result of his intermittent practice in Ontario during 2007-2014, the tribunal was of the view that a suspension order in Ontario that would expire in less than a year would be an inappropriate sanction.

39. The "mirror" argument, that the sanction in Ontario should mirror that imposed in Quebec, had a great deal of appeal initially. Consistency and comity with our neighbouring regulators should be encouraged to ensure fair treatment and to prevent upsetting any negotiated resolutions. In theory, the member's submission that he should avoid revocation in exchange for full restitution of fraud victims would be a reasonable compromise, with the member being suspended from practice for 10 years as part of the bargain. Regrettably we are unable to make an order that mirrors the order made in Quebec because of the member's intermittent practice in Ontario, which means that there was no suspension of practice in Ontario for a decade, because of the member's failure to report his suspension in Quebec to the governing body in Ontario. As a result, any suspension that terminated next year would not be a 10-year suspension, and the Order proposed by the member would not reflect the seriousness with which the tribunal views the member's misconduct, as the practical effect would be to allow the member to have practised in Ontario most of the period under which he was under suspension in Quebec. A prospective 10-year suspension in Ontario while the member is practising in Quebec would also not be the appropriate result from a general or specific deterrence point of view.

40. The tribunal also considered the proposition that the member be allowed to resign. Counsel for the member acknowledged that the *Darwish* case he relied upon (a) did not involve illegal acts, (b) was a joint submission, and (c) involved a resignation, a promise not to reapply, and a promise not to hold oneself out as a Chartered Accountant. The last point is relevant as the Member intends to practise as a Chartered Professional Accountant next year.

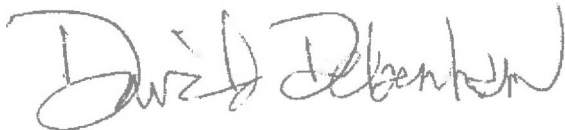
41. The case law is clear--- frauds of the size involved here call for revocation as a matter of specific and general deterrence unless the member had physical or mental impairments that indicate a diminished personal responsibility for the serious misconduct in question. While we do not foreclose other exceptional circumstances, absent diminished personal capacity, it is difficult to foresee any circumstance where a member be allowed to resign after such serious misconduct as occurred here. In this case, there is no evidence of such incapacity. The member's alternative submission is therefore also rejected.

42. The tribunal is mindful that regardless of what we decide, the member will be allowed to continue aspects of his tax consultancy practice in Ontario, and he is confident he will be re-commencing his practice as a CPA in Quebec next year. Therefore, our order to revoke his membership is far from draconian. If Mr. Pfeiffer's public accounting licence had not already expired in 2012, the tribunal would have ordered revocation of that licence as well.

Reasons for Costs

43. CPA Ontario is a self-regulatory body and as such, disciplinary matters are a part of its governing activities. The principle that a member should bear an appropriate share of the costs, when their misconduct is responsible for the expense of the investigation and prosecution, is well established. The parties were in agreement on costs of \$8,500 payable by the member, and the tribunal agreed with the joint submission that one year was a reasonable time for Mr. Pfeiffer to pay the costs ordered of \$8,000.

DATED AT TORONTO THIS *9TH* DAY OF JANUARY, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



D.B. DEBENHAM, CPA, CMA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

A.R. DAVIDSON, CPA, CA

D.L. KNIGHT, FCPA, FCA

P. McBURNEY (PUBLIC REPRESENTATIVE)